

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7394

Petition of Vermont Electric Power Company, Inc., and)
Vermont Transco, LLC, for authority to condemn)
easement rights in property interests of David P. &)
Carrie T. Hathaway, the Vermont State Employees)
Credit Union, Countrywide Bank, and the Countrysides)
of Waterbury Homeowners Association, Inc. and its)
Individual Members, in Waterbury, Vermont, for the)
purpose of constructing the 115 kV transmission line)
portion of the so-called Lamoille County Project)

Order entered: 10/19/2009

ORDER DENYING RECONSIDERATION

I. INTRODUCTION

In this docket, the Vermont Public Service Board ("Board") has ordered the condemnation of certain real property belonging to David and Carrie Hathaway (the "Landowners") in Waterbury, Vermont, in order to facilitate the construction of the 115 kV transmission line portion of the so-called Lamoille County Project. The Vermont Electric Power Company, Inc. ("VELCO") has sought partial reconsideration of the Board's decision ordering certain revisions to the condemned easement deed proposed for recordation by VELCO in the Waterbury land records. In this Order, we deny VELCO's request for reconsideration and order VELCO to further revise its proposed easement deed.

II. PROCEDURAL HISTORY

On August 20, 2009, the Board issued a final order awarding the Landowners \$39,000 in compensation damages for the condemnation of certain easement rights on their property in Waterbury for the benefit of VELCO. In addition to the payment of this compensation, the Board also ordered VELCO to revise the proposed easement deed (the Proposed Deed) to make it consistent with a quitclaim deed, as opposed to a warranty deed. This requirement was consistent with prior condemnation cases in which the Board has determined that warranty deed

language is not appropriate in the context of a condemnation because the easement granted is not voluntary.

On September 1, 2009, VELCO filed a letter with the Board seeking to be excused from revising the first sentence of the fourth full paragraph on the second page of the Proposed Easement¹. VELCO explained that it would not be appropriate to revise this particular sentence to reflect a quitclaim deed because that sentence is not concerned with "warranting past actions but is prohibiting the landowners from taking future actions that are inconsistent with the use of the easement as a transmission corridor."²

III. DISCUSSION AND CONCLUSION

VELCO's request to be excused from performing the full actions required by our ordering clause regarding quitclaim revisions in our Final Order in this docket was made in the form of a letter without reference to the legal authority for the requested relief. We will treat this letter as a motion to alter a judgment pursuant to Rule 59(e) of the Vermont Rules of Civil Procedure.³ A motion to alter a judgment is addressed to the sound discretion of the court and is designed to allow corrections or modifications to a judgment to be taken promptly before review on appeal.⁴

We decline to amend the revision requirements of our Final Order as requested by VELCO. It remains our conclusion that warranty language is inappropriate for use in a deed that is the product of a lawfully-ordered condemnation. The resulting impact upon the real property

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1. That sentence, as drafted by VELCO, reads as follows:

The Grantor hereby ~~covenants~~ agrees that no building, line, conduit, dam, levee, lake, pond, or any other structure or thing will be erected or placed within the limits of or upon the Easement Area, nor will any change in the grade or elevation of the Easement Area be made, which, in the judgment of the Grantee, might interfere with the exercise of the rights hereby granted.

Letter dated September 1, 2009, from Elijah Emerson, Esq., to Susan M. Hudson, attached proposed Easement Deed at 2, ¶ 4 (editorial marks in the original).

2. Letter dated September 1, 2009, from Elijah Emerson, Esq., to Susan M. Hudson at 1.
3. The Vermont Rules of Civil Procedure are applicable to Board proceedings pursuant to Vermont Public Service Board Rule 2.105.
4. *Gardner v. Town of Ludlow*, 135 Vt. 621 (1973).

rights of the Landowners is necessarily involuntary in nature. It therefore makes no sense to allow a deed of transfer to be drafted and recorded that creates the fiction of an "agreement" that has been imposed upon the Landowners by force of law. Accordingly, we order VELCO to revise the sentence at issue as follows:

The Grantors, their successors and assigns, shall not erect or place within the limits of or upon the Easement Area any building, line, conduit, dam, levee, lake, pond or any other structure or thing, nor will any change in the grade or elevation of the Easement Area be made, which, in the judgment of the Grantee, might interfere with the exercise of the rights hereby conveyed.

SO ORDERED.

Dated at Montpelier, Vermont, this 19th day of October, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 19, 2009

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.